

Prison Reform and Redemption for Whom?

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To cite this article: Wolcott, J.M. (2018). Prison reform and redemption for whom? *Texas Education Review*, Fall 2018 Special Issue, 60-70. <http://doi.org/10.15781/T24B2XQ60>

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This paper examines the ways in which people of color are systematically disadvantaged by the criminal justice system in the United States and questions who the true beneficiary of prison reform is. I review specific economic and educational policies that have contributed to this disenfranchisement, such as the School-to-Prison Pipeline, and policies surrounding the use of private prisons. I use Critical Race Theory as a lens to understand racial inequality in our criminal justice system and the ways in which criminal justice reform has failed to consider race in its policies. I conclude by examining the Trump administration's efforts at addressing the problems with our criminal justice systems and offer policy recommendations.

Keywords: *prison reform, criminal justice reform, school-to-prison pipeline, Critical Race Theory*

Mass incarceration is a growing problem in the United States with almost no tangible solutions in sight (Vazquez, 2017). Though the U.S. makes up five percent of the world's population, it contributes to 25% of the prison population (Cohen, 2014; Vazquez, 2017). Paradoxically, in the last decade, overall crime rates in the U.S. have decreased, but the country's prison population continues to increase (Cohen, 2014; Vazquez, 2017). In this paper, I begin by examining economic, criminal justice, and educational policies that have created a funnel for people of color into our criminal justice system. Next, I introduce Critical Race Theory and illustrate the ways in which people of color are systematically disadvantaged in the United States. Then, I discuss the policy implications for the Trump administration's 2017 Prison Reform and Redemption Act and the ways in which it fails to address many of the issues plaguing our criminal justice system.

While a bipartisan bill targeted at the problems of our prison system is a critical issue in need of resolution in America, I argue that this bill does little to address front-end issues of our prison system, nor does it address the policies that have led to the mass incarceration rates in the United States. Furthermore, this bill does not address the racial disparity between incarcerated populations in this country and does not acknowledge the kinds of economic and education policies that pipe people of color into our prison system. Finally, I conclude with policy recommendations for the Trump administration, as well as insight into how critical race theory can help us address some of the problems of our criminal justice system.

Background

There are a number of policies, both past and present, which have helped fuel the mass incarceration rates in the United States. These policies have criminal, educational, and economic implications that disproportionately target people of color.

Policies that Led to Mass Incarceration

One of the major factors that contributes to mass incarceration rates in the United States is the profitability of the prison system (Alexander, 2012). Private corporations, like the Corrections

Corporation of America, are in the business of supplying the government with private properties to house prisoners and are profiting greatly off our federal and state governments (Alexander, 2012; Selman & Leighton, 2010). Thus, they have an invested interest in higher sentencing rates and tougher crime and drug penalties, as these policies keep their prisons full and allow them to expand their business (Alexander, 2012; Selman & Leighton, 2010). Beyond the private prison industry, there are other private and public sector businesses profiting off prisoners (Alexander, 2012). These include the phone companies that overcharge prisoners and families to speak with one another, gun manufacturers that arm prison guards and police officers, health care providers, and the U.S. military and other private manufacturers that rely on cheap prison labor (Alexander, 2012). Thus, Alexander (2012) argued the volume of public and private sector jobs created by the prison system combined with the billions of dollars in private and public investment has discouraged any attempts at real prison reform. However, the economic advantages gained by those profiting from the current prison system do not compensate for the catastrophic human and financial cost for the families involved and the communities within which they live (Vazquez, 2017).

In addition to the financial advantages of maintaining a robust prison system, the federal government has a history of introducing tough on crime policies that helped keep U.S. prisons full. In the 1980s, the Reagan administration launched the “War on Drugs” campaign which severely cracked down on drug offenses through zero tolerance policies and mandatory minimum sentences (Alexander, 2012; Bennett, 2014; Cohen 2014). This was followed by the Clinton administration’s “Three Strikes” rule in the 1990s, which instituted stricter sentencing policies and mandatory minimums for repeat offenders (Alexander, 2012). The combination of these policies and the government’s tough on crime stance led to a rapid increase in incarceration rates from 1985 to 2000 (Alexander, 2012; Bennet, 2014; Selman & Leighton, 2010).

In contrast to Reagan and Clinton era policies, the Obama administration recognized the importance of prison reform and took steps to resolve this issue. For example, from 2014 until he left office in 2017, President Obama commuted the sentences of 1,715 individuals imprisoned under outdated laws, which was more than the last six presidents combined. Obama also tasked the Attorney General with reviewing the overuse of solitary confinement and worked to strengthen the relationships among police officers and their communities (The White House: President Barack Obama, n.d.). The Obama administration also called for the Bureau of Prisons, which was established within the Department of Justice in 1930 to manage and regulate all federal penal and correctional institutions, to reduce their reliance on private prisons (Brennan Center for Justice, 2018; Federal Bureau of Prisons, n.d.). While these initiatives worked to address some of the damage done by our criminal justice system, the Obama administration was unable to pass any bipartisan criminal justice reform policies through the House and Senate.

Since taking office in 2017, President Trump has rolled back many Obama era policies aimed at criminal justice reform. This includes resuming the use of private prisons, increasing the use of mandatory minimums in drug related offenses, and decreased federal oversight of police and policies aimed at healing the relationship between police and communities (Brennan Center for Justice, 2018). However, the Trump administration introduced a new bill in 2017 known as the Prison Reform and Redemption Act, which was signed by 10 Democrats and 11 Republicans, into Congress (see Appendix). The bill aims to reduce the recidivism rate of prisoners once they are released from prison through education and job training (Wheeler, 2018). This is the Trump Administration’s first

attempt at criminal justice reform, and it is important to determine whether there is potential for this policy to effect real change for people of color in this regard.

Impact of Policies on People of Color

Research shows that Black youths enter the criminal justice systems as adults at almost seven times the rate of their White peers, and 60% of incarcerated males are Black or Latino (Vazquez, 2017). Additionally, Blacks and Latinos are incarcerated at 20 to 25 times the rate of Whites for drug offenses and make up 75% of all people imprisoned for drug-related crimes. Although the majority of illegal drug users are White, people of color are the ones suffering the harshest penalties (Alexander, 2012).

Policies like “Three Strikes” and the War on Drugs disproportionately targeted people of color and led to heavier policing of the city neighborhoods where they live (Alexander, 2012; Bennett, 2014; Cohen, 2014). These policies have had dire consequences for poor communities of color. Heavier policing and increased incarceration rates have translated into increased poverty, chronic unemployment, broken families and crime in these areas; additionally, these policies have dismantled families of color and made it difficult for them to survive, let alone prosper, in these environments (Alexander, 2012; Cohen 2014). Furthermore, tough on crime policies made sending people to prison the norm rather than the exception, especially for people of color (Vazquez, 2017). Thus, poor communities and families of color are being ravaged while those with money invested in the prison system continue to prosper.

Education Policies’ Impact on the U.S. Prison System

In addition to crime and drug policies, education policies passed by the federal government also have helped grow the U.S. prison population. For example, the No Child Left Behind Act (NCLB) was signed by the Bush Administration in 2002 as an attempt to reform the American education system (Johnson & Hanegan, 2006; Ryan, 2004). The act was introduced in response to reports that American students were falling behind and being out performed by international counterparts (Johnson & Hanegan, 2006; Ryan, 2004). Under NCLB, administrators were held more accountable for achievement gaps between schools and were tasked with coming up with solutions to close this gap. For example, underperforming schools were obligated to provide additional services to students that were struggling academically until they could demonstrate students were meeting policy standards (Johnson & Hanegan, 2006; Ryan 2004). NCLB measured student and teacher success through standardized test results, especially in the areas of mathematics, reading, and science (Johnson & Hanegan, 2006; Ryan, 2004). The bill also promoted parent choice and provided school districts more flexibility in how and where they used their federal funding (Johnson & Hanegan, 2006). Thus, parents had the freedom to move their children from underperforming schools into better performing districts, leaving those who could not afford to do so behind (Johnson & Hanegan, 2006).

Large components of NCLB policy included high-stakes standardized testing, the importance of improving student and school performance, and reaching uniform benchmarks set forth by the policy (Kim, Losen & Hewitt, 2010; Ryan, 2004). NCLB was a results based policy that

measures teacher and school success on the test scores of its students. Education policies that place a strong emphasis on high-stakes testing and uniform achievement benchmarking increase pressure on schools to push low-performing and -achieving students out of the school system, as schools are determined to avoid the stigma of being a failing school (Kim, Losen & Hewitt, 2010; Ryan, 2004). With nowhere else to turn, many of these students end up in what is called the School-to-Prison Pipeline.

School-to-Prison Pipeline

The public school's failure to serve populations plagued by poverty and communities filled with at-risk youth is reflected in the prominence of people of color within the "School-to-Prison Pipeline" (Kim, Losen & Hewitt, 2010; Skiba, Arredondo, & Williams, 2014). As defined by Kim, Losen, and Hewitt (2010), the School-to-Prison Pipeline "presents the intersection of the K-12 educational system and the juvenile justice system, which too often fail to serve our nation's at risk youth" (p. 1). The U.S. public school system has failed to meet the educational and social needs of a large number of students it is meant serve, with the majority of those students being of color and low socioeconomic status (Kim, Losen & Hewitt, 2010). As mentioned, education policies that place a strong emphasis on high-stakes testing and results have motivated schools to push low-performing students out of the school system. Low-achieving students and students with disabilities can be a financial drain on school districts, as they require additional services and support (Kim, Losen & Hewitt, 2010). Thus, school districts have begun to rely on juvenile detention centers to rehabilitate these students (Kim, Losen & Hewitt, 2010). Without alternative schools or options, many of these students, in turn, are pushed into the prison pipeline (Berlowitz, Frye, & Jette, 2017; Kim, Losen & Hewitt, 2010; Skiba, Arredondo, & Williams, 2014).

Once a student enters the School-to-Prison Pipeline and ends up in the juvenile detention system, they often are inadequately educated and unprepared to re-enter society upon release (Kim, Losen & Hewitt, 2010). Some school districts even go as far as denying students who have been expelled from school to any education at all (Kim, Losen & Hewitt, 2010). Thus, students that have fallen victim to the pipeline and the policies that keep it in place have little hope of accessing higher education or resources to improve their socioeconomic situation once released back into society. Furthermore, families and communities with large detention center and prison populations suffer economic costs for years to come (Kim, Losen & Hewitt, 2010). Communities not only lose out on potential productive citizens that will give back to their communities, but incur the financial responsibility of keeping these individuals in the criminal justice system, a cost that far outweighs the cost of public education (Kim, Losen & Hewitt, 2010).

Using Critical Race Theory to Understand American Education and Criminal Justice

Critical Race Theory (CRT) can help us understand the deficiencies in the education and criminal justice systems by using a racial lens. CRT builds upon many of the racial issues that were brought to the forefront during the Civil Rights Movement of the 1950s and 1960s (Delgado & Stefancic, 2017; Martinez, 2014). CRT brings together "issues of power, race, and racism to address the liberal notion of color blindness and argues that ignoring racial difference maintains and perpet-

uates the status quo with its deeply institutionalized injustices to racial minorities” (Martinez, 2014, p. 9). The theory questions the foundations of our society and the idea that liberalism is a solution to issues of race and inequality (Collins, 2015; Delgado & Stefancic, 2017; Martinez, 2014). CRT also provides a framework for understanding why the experiences and opportunities for people of color differ so greatly from their White peers.

Students that have been labeled at risk or that attend low-performing schools are subjected to much harsher and more punitive learning environments when compared to students in affluent school districts (Kim, Losen & Hewitt, 2010). In an effort to maintain order and deal with problematic behavior, low-performing school districts have turned to police-like tactics to clean up their schools. This has led to an overreliance on law enforcement to carryout disciplinary action on behalf of school administrators; police are used to conduct random sweeps and locker checks, student searches, interrogations, and drug testing on students (Kim, Losen & Hewitt, 2010). Law enforcement can then use this information against students in court proceedings and to turn students over to the juvenile justice system (Kim, Losen & Hewitt, 2010). Kim, Losen, and Hewitt (2010) argued that police officers often spend more time patrolling hallways and doling out punishments than teachers and administrators and that these methods are counterproductive for preventing troubled and criminal behavior in schools.

Studies have shown, and Critical Race theorists would argue, that such tactics are used to target students of color far more than their White peers (Berlowitz, Frye, & Jette, 2017; Kim, Losen & Hewitt, 2010; Skiba, Arredondo, & Williams, 2014). Early interaction with the criminal justice system can result in negative psychological effects in youth of color, which in turn can result in a higher likelihood of being pushed out of school and future interactions with the criminal justice system (Berlowitz, Frye, & Jette, 2017; Kim, Losen & Hewitt, 2010; Skiba, Arredondo, & Williams, 2014). Studies also have shown that students of color are overrepresented in every stage of the pipeline, from enrollment in poorly funded school districts, to suspension and expulsion rates, to referrals to disciplinary schools and law enforcement, and finally, in the juvenile justice system (Kim, Losen & Hewitt, 2010, p. 34). With inadequate educational preparation and services, students of color are at risk for higher recidivism rates once released from the juvenile system and more likely to re-enter the criminal justice system as adults (Berlowitz, Frye, & Jette, 2017; Kim, Losen & Hewitt, 2010; Skiba, Arredondo, & Williams, 2014). Critical Race Theory points to this phenomenon as evidence of how those in power continue to keep Black and Latino student populations at a disadvantage.

From a criminal justice standpoint, Critical Race theorists point to the following figures as evidence of racism in our criminal justice system: Black men who murder White men are executed at nearly ten times the rate as White men who murder Black men, and there are many more Black men sitting in prisons than there are on college campuses (Delgado & Stefancic, 2017, p. 120). Other racially motivated criminalized behavior within our criminal justice system includes: racial profiling, disparities between Black and Latino motorists stopped by police versus White motorists, heavier policing in poor city neighborhoods, city ordinances that punish young Black and Latino men that belong to gangs or congregate in groups or on street corners, and harsher sentencing for crack-cocaine possession versus powder cocaine (Delgado & Stefancic, 2017; Van Cleve & Mayes, 2015). Critical Race theorists also argue that white-collar crimes, which are nonviolent criminal offenses such as fraud, blackmail, and other illegal financial transactions, cause more deaths and property losses on a per capita basis than street crime (Delgado & Stefancic, 2017, p. 121; Schwartz & Kre-

mer, 2012.). Critical Race Theory illuminates how the criminal justice system is designed to specifically target people of color, and through this lens, we are able to see how it has been specifically designed to keep prisons filled with people of color.

The Prison Reform and Redemption Act

The Prison Reform and Redemption Act was introduced into Congress in 2017 with bipartisan support (see Appendix). The bill attempts to reduce the recidivism rate of prisoners once they are released from prison and aims to accomplish this by allowing eligible nonviolent prisoners to complete evidence-based educational, skills, or job training that have shown to reduce recidivism rates for inmates while still in prison (Prison Reform and Redemption Act, 2017-2018; Wheeler, 2018). Drug treatment and rehabilitation programs also will be available, as proper drug treatment and mental health counseling can positively influence recidivism rates (Prison Reform and Redemption Act, 2017-2018; Wheeler, 2018). Upon successful completion, prisoners will be permitted to serve the remainder of their sentence in a halfway house or while under house arrest and will be permitted to seek employment (Prison Reform and Redemption Act, 2017-2018; Wheeler, 2018).

Trump's Prison Reform and Redemption Act, known as a back-end approach to prison reform, can be effective in rehabilitating prisoners before they reenter society (Malcolm, 2016). Back-end approaches rely on our criminal justice system to truly reform prisoners prior to their release. These programs target modest offenders who have taken advantage of programming offered to them while incarcerated and allow prisoners to earn credit towards early release (Malcolm, 2016). However, critics of back-end reform argue such approaches may increase the racial disparity among prisoners. For example, the criteria used to determine eligibility for such programs and for early parole often favor white-collar offenders, who are more likely to be White than Black or Latino, thus inadvertently disadvantaging prisoners of color (Malcolm, 2016). Critical Race theorists argue that such policies continue to marginalize and exclude Blacks and Latinos within our criminal justice system and fail to provide equal opportunities for release for all deserving prisoners, regardless of race.

Though the Prison Reform and Redemption Act may help prisoners leave the criminal justice system early, it does nothing to address the problems that initially land individuals in prison. These issues, as previously discussed, include such things as mandatory minimums and heavier, militant-like policing in communities of color. Conversely, rather than working to improve the experience of racial minorities, the Trump administration has rolled back many of the Obama era policies that attempted to resolve some of these issues (Brennan Center for Justice, 2018). The Trump administration has also engaged in rhetoric that sensationalizes crime in city neighborhoods, though crime rates are actually decreasing in this country (Brennan Center for Justice, 2018; Van Cleve & Mayes, 2015; Vazquez, 2017). When considering this reality, combined with the knowledge that back-end approaches tend to favor White prisoners, Critical Race Theory calls into question whether the Trump administration truly is devoted to prison reform. If the administration is committed, it begs the question: prison reform and redemption for whom?

Recommendations for Future Prison Reform Policy Makers

Education is the first place to start when considering solutions to mass incarceration. School districts should work to avoid zero-tolerance policies when dealing with misconduct and reduce police presence in schools (Berlowitz, Frye, & Jette, 2017; Kim, Losen & Hewitt, 2010). Students of color should be treated as students first and afforded the same rights as their White peers, especially those who are not participating in criminal behavior. Administrators should have appropriate evidence and reasoning prior to getting law enforcement involved with its students. As is the law outside of the classroom and in regular society, law enforcement should not conduct police-like raids and searches without probable cause. Minimizing the use of police tactics in a school setting could go a long way toward keeping students out of the School-to-Prison Pipeline; students should not be made to feel like criminals as soon as they set foot over the threshold of their school entrance.

Alternative schools and programs are needed for students who are unable to thrive in a traditional school setting and who require additional services to succeed and pursue higher education or viable job opportunities upon graduation. Critics of these schools cite inadequate funding and substandard learning environments as potential pitfalls of alternative schools that could still lead students into the pipeline (Kim, Losen & Hewitt, 2010). Thus, school districts need to ensure that alternative programs and institutions are reaching their goals of serving at-risk youth and are not doing more harm than good (Berlowitz, Frye, & Jette, 2017; Kim, Losen & Hewitt, 2010). Such programs should incorporate appropriate mental health, social work, and counseling services to deal with students who need assistance beyond the qualifications of their teachers (Berlowitz, Frye, & Jette, 2017). Furthermore, alternative schools should not be used to further ostracize and marginalize at-risk youth and should avoid victim blaming (Berlowitz, Frye, & Jette, 2017). Teachers, administrators and counselors should recognize that such behaviors are a product of the environment from which these students come but are not the fault of the student and should institute a compassionate approach with dealing with students (Berlowitz, Frye, & Jette, 2017).

In contrast to back-end approaches to prison reform, front-end prison reform seeks to reduce the amount of time prisoners are sentenced to begin with and to reform the policies surrounding mandatory minimums and sentencing (Malcolm, 2016). To combat the over criminalization of people of color in our criminal justice system, Critical Race scholars take a front-end approach to criminal justice reform and propose solutions that take race into account when examining why someone ends up in a courtroom and appropriate sentencing. One proposal is the use of jury nullification in cities that have larger Black and Latino populations. In cases of nonviolent crimes, jury nullification grants juries more power to decide if racism was a contributing factor in the defendant's arrest (Delgado & Stefancic, 2017; Van Cleve & Mayes, 2015). Such practices allow juries to determine if the defendant is better served returning to his or her community rather than spending time in jail, which can aid in reducing the disproportionate number of young people of color who are incarcerated (Delgado & Stefancic, 2017; Van Cleve & Mayes, 2015). CRT also can help those working in the criminal justice system read between the lines of why a defendant keeps returning to their courtroom. For example, judges may see that prior offenses on a defendant's record were the result of racial profiling and thus determine that a harsh penalty or sentence would be an inappropriate response (Delgado & Stefancic, 2017). These are just a few examples of how CRT and front-end

criminal justice reform can work together to reduce the number of people of color who end up behind bars.

When considering back-end approaches like the Prison Reform and Redemption Act, it is important to make sure that these programs are properly funded and equitable. The Reform Act also needs to ensure that inmates are adequately prepared to return to society once they have completed their programming and are granted early release. Programming should offer pathways not only into the job market but into higher education, as well. Those that are released with only a high school education or less are less likely to secure work that can improve their socioeconomic status and are more likely to reenter the prison system (Vazquez, 2017). States that have utilized back-end reform and reeducation programs for inmates have seen success with this approach (Malcolm, 2016). Critical Race scholars also have studied the profitability of our prison system and the problematic use of private institutions to house prisoners (Alexander, 2012; Delgado & Stefancic, 2017). This has led to a public outcry of why prison sentences in the U.S. are so long and why people of color suffer the most under current sentencing practices (Delgado & Stefancic, 2017). States, in turn, have worked to commute sentences of prisoners deemed to have paid their debt to society, which resulted in early releases to reduce overcrowding and to avoid further state monetary investment in prison systems (Delgado & Stefancic, 2017).

Conclusion

The issue of mass incarceration must be approached from all sides in order to truly make a difference in our criminal justice system. Rather than relying on policies that only help once individuals are in prison, the Trump Administration should aim to institute policies that address issues before, during, and after someone has been convicted of a crime. Thus, to truly reform our criminal justice system, we need policies that address both the front and back end of our criminal justice system and which, ultimately, support the communities of color being ravaged by mass incarceration. When future policy makers consider approaches to criminal justice reform, it is vital that they take race into account to ensure that people of color are not subjected to further marginalization and discrimination. Furthermore, it is not enough to address the issues prisoners face once they are incarcerated; policy makers need to do more to prevent and support the communities before they end up in the criminal justice system.

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Appendix

U.S. Congressional members who signed the Prison Reform and Redemption Act include: Rep. Hakeem S. Jeffries (D-NY), Rep. John Conyers Jr. (D-MI), Rep. Sheila Jackson Lee (D-TX), Rep. Cedric L. Richmond (D-LA), Rep. Karen Bass (D-CA), Rep. Tim Ryan (D-OH), Rep. Steve Cohen (D-TN), Rep. David N. Cicilline (D-RI), Rep. Pramila Jayapal (D-WA), Rep. Joyce Beatty (D-OH), Rep. Bob Goodlatte (R-VA), Rep. James F. Sensenbrenner Jr. (R-WI), Rep. Tom Marino (R-PA), Rep. Darrel E. Issa (R-CA), Rep. Mark Walker (NC), Rep. Mia B. Love (R-UT), Rep. Cathy McMorris Rodgers (R-WA), Rep. Todd Rokita (R-IN), Rep. Fred Upson (R-MI), Rep. Carlos Curbelo (R-FL) and Rep. Karen C. Handel (R-GA) (H.R.3356, 2017).